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D.B. CIVIL SPECIAL APPEAL NO.181/2007
[BHANWAR SINGH VS. THE CENTRAL CO-OPERATIVE BANK LTD. BIKANER]

Dated:- 28.03.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. BHANWAROO KHAN,J.

Mr. S.Sharma for the appellant;

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Having heard learned counsel for the appellant, we do not find any merit in this appeal against the order passed by the learned Single Judge dated 15.10.2006.

The facts of the case are that the appellant was appointed with the respondent Bank on 2.2.80 under Antyoday Yojana providing some job to persons living below poverty line. The scheme came to an end on 31st March 1982 and so also the appellants services came to an end.

On 11.3.82 Registrar, Cooperative Society issued an order that the persons who were earlier appointed as Junior Accountant/ LDC/ Driver and Class-IV employees under Antyoday Yojana would be absorbed in the bank cader by the Central Cooperative Bank provided they fulfil the minimum qualification prescribed for regular appointment and those who do not fulfil the minimum qualification may be allowed to continue in the service of the bank in the existing pay scale. While issuing order dated 16.4.85 by the respondent Bank it was clearly stated that Junior Accountant shall be absorbed on the post of LDC. However, while

absorbing on post of LDC their pay was protected. It was further stated that future increment will be given on completion of one year from the date of absorption and persons so absorbed as LDC will be placed in Seniority below all those who have been directly recruited.

It was also stated that for Junior Accountant and LDC-cum-Cashier, the minimum qualification prescribed is Graduation and the Junior Accountant and LDC appointed under Antyoday Yojana will be absorbed as LDC. Those who were non-graduate LDC their pay should also be protected as per the last pay scale applicable on LDC in the state only.

Thus under the scheme of absorption no absorption was envisaged against the post of accountant. In the aforesaid circumstances, in the first instance the applicant was given appointment as LDC under the aforesaid scheme. He challenged his absorption as LDC by way of filing the writ petition. The said writ petition was decided by the order dated 05.08.1992 by this court holding that case of absorption will be decided by the Registrar. The order clarified that this would not oblige the Registrar to re-open the matters where absorptions have been finalised and no grievance has been made against such absorptions.

In the aforesaid circumstances, the matter of appellant's absorption in Central Cooperative Bank was reconsidered. In the first instance by the order dated 24.7.99 the appellant was directed to be absorbed as LDC-sum-Cashier as he did not fulfil the requisite

qualification. However, revision against the said order before Additional Registrar (Appeals) was allowed.

The appeal was filed on 24.7.99 this was made subject matter of writ petition, which has been decided by learned single judge. Learned Single Judge has held after considering the scheme and the eligibility qualification that since the appellant was not qualified for the post of Accountant/ Executive Officer and D Grade post, his absorption as LDC cannot be held to be erroneous. The petitioner being not holding the post in the first instance could not claim any right under the beneficial scheme to be absorbed on the higher post for which he was eligible. The scheme benefited for certain persons who were otherwise not entitled to continue in service and could not have enforced continuance of their service. With these observations the writ petition filed by the Central Cooperative Bank was allowed. The order of Additional Registrar for absorption of petitioner against Grade D post was set aside and absorption of appellant as LDC-cum-cashier was up held.

Learned counsel for appellant has taken us through various documents on record and urged that he was eligible for the post of Junior Accountant in the first instance and was eligible to be absorbed on Grade D post. However, this contention has not been made on the basis of material to which our attention has been drawn. According to qualification prescribed for holding the post of Junior Accountant by promotion, the minimum requisite is Graduate with three years experience on the post from which promotion is sought. For the direct recruitment the

minimum required qualification is graduate degree with subject of commerce and accountancy. Petitioner became Graduate in the Year 1992. The petitioner had no experience of three years of the lower post to claim absorption of the basis of qualification prescribed for promotion. As he was not appointed through direct recruitment as LDC-Cum-Cashier nor he is a graduate in commerce so that he could claim to be absorbed on the first date of absorption. Further promotion as envisaged under the scheme may be offered to him as and when eligible. Here the question is only about absorption in the first instance.

We are in the agreement with learned single judge that since the appellant was not eligible to hold a post of Accountant or the Gr. D post of the bank as on date of absorption, he was not entitled to be absorbed on higher post in terms of the scheme.

Accordingly, the appeal having no force is hereby dismissed.

(BHANWAROO KHAN),J. **(RAJESH BALIA),J.**

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